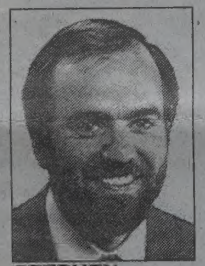
Hate-crime laws punish thoughts



STEPHEN CHAPMAN

When a gunman walked into a day care center in suburban Los Angeles last month and shot five people, three of them young children, one question immediately sprang from the lips of journalists and commentators: Was it a hate crime?

The obvious response should have been: What earthly difference does it make? When a lunatic with a gun tries to kill a bunch of people, the animating motive is not good will. Would the parents, sitting watch at the hospital beside their wounded children, feel better knowing the attacker was acting out of animus toward all humanity rather than distaste for a particular minority group? Would they say, "What a relief — somebody tried to murder my baby, but at least it wasn't an anti-Semite"?

As it turned out, the man who fired the shots was a bigot with ties to neo-Nazi groups. That helps to explain what he did, but it's hard to see how it makes the crime any more vicious, shocking or scary. The killers in Littleton singled out football players; Buford Furrow was after Jews; a guy in Atlanta had a grudge against the brokerage business; and some crazies have simply killed people indiscriminately. Can we really say that one of these mass shootings is appreciably worse than the others?

Matthew Shepard, a 21-year-old student at the University of Wyoming, was robbed, savagely beaten, tied to a fence and left to die in near-freezing temperatures. Gay rights groups said he was killed because he was gay, and lamented Wyoming's lack of a hate-crime law.

But a hate-crime law wouldn't have prevented the murder — any more than the law against murder prevented it. Nor would it have meant a stiffer sentence: The crime carried the possibility of the death penalty, which happens to be the most severe punishment in our criminal justice toolbox.

And decreeing that it's worse to kill someone because he's gay than to kill someone because he's a college student smacks of Dante's Inferno, where the better and worse places in Hell were assigned according to a formula of relative sinfulness. Maybe the Almighty has the wisdom to calibrate crimes with such exquisite precision, but such powers do not belong to mere mortals.

Supporters of these laws insist that some crimes are clearly worse because they stem from prejudice of one sort or another. Painting "Kill the Jews" on a synagogue, to be sure, is different from painting "Josh Loves Caitlin." What's important, though, is that one message aims at intimidating people and the other doesn't.

If someone painted "Kill the Rich" or "Kill Those Who Drive on the Sabbath" on a Reform synagogue in an upscale Jewish neighborhood, the attempt to intimidate would be just as obvious, but it wouldn't qualify as a hate crime. Do we really believe it's less blameworthy to kill a Jewish tycoon because he's wealthy than because he's Jewish?

The effort to follow the logic of hate-crime laws can be endlessly perplexing. In a recent Chicago case, three African-American kids, ages 10, 13 and 14, were arrested for allegedly beating and kicking a 12-year-old white boy while calling him "Pillsbury Doughboy" and "whitey." When prosecutors asked that the assault be classified as a hate crime, a juvenile court judge inexplicably refused. Apparently some hate crimes are more equal than others.

But the central flaw in such laws is not their lack of inclusiveness; it's their focus on thoughts and words. Under the First Amendment guarantee of free speech, the government may not make it a crime to express or hold racist, sexist or anti-Semitic ideas. But under the hate-crime laws, the government does just that.

Such laws say that someone who commits a violent crime out of bigotry will be punished not only for the violence but for the bigotry. Part of his prison sentence will be attributable solely to the officially disfavored words he uttered — or maybe, if he was silent, just to the books he checked out of the library.

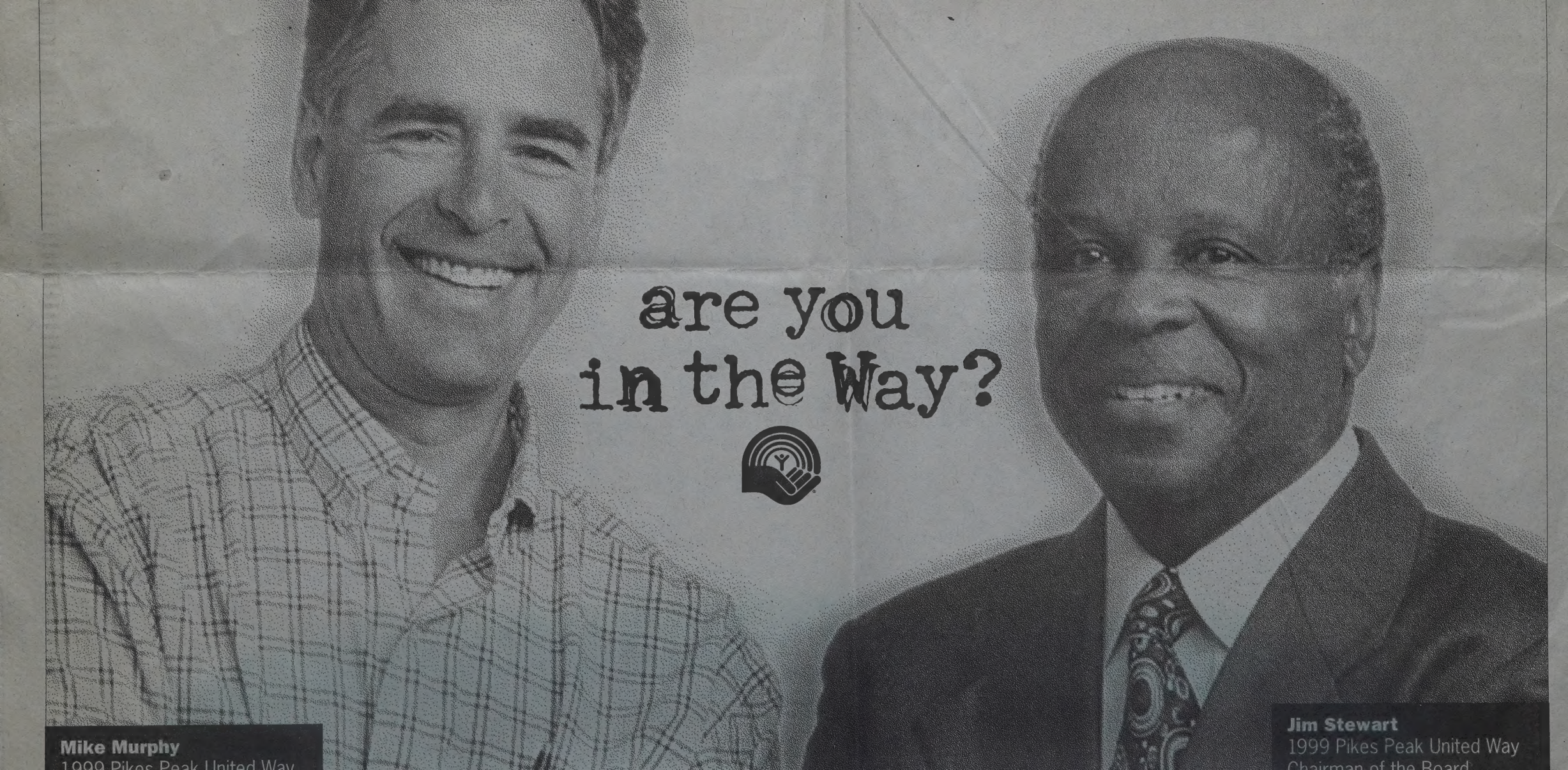
Northwestern University law professor Martin Redish offers a thought experiment: What if we passed a law providing extra punishment for anyone who commits a crime motivated by the desire to advance the cause of communism? That statute clearly would be unconstitutional, because it discriminates against people on the basis of their viewpoint. But a hate-crime law has exactly the same defect. It says that people who espouse certain disfavored views will be treated worse than those who don't.

That's not crime control; it's mind control. When we deliberately do things that harm our fellow citizens, the government has every right to punish us. What thoughts we have while doing them are none of its business.

Chapman is a columnist for the Chicago Tribune. Write to him in care of Creators Syndicate, 5777 W. Century Blvd., Suite 700, Los Angeles, CA 90045. His e-mail address is schapman13@aol.com

THE GAZETTE 9/9/99

John Branch / San Antonio Express News



Mike Murphy
1999 Pikes Peak United Way

Jim Stewart
1999 Pikes Peak United Way